



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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June 8, 1995
AO-95-20

Senator Robert A. Durand
39 Red Spring Road
P.O. Box 262
Marlboro, MA 01752-9698

Re: Fundraising by lobbying organizations

Dear Senator Durand:

This letter is in response to your May 11, 1995 request for an advisory opinion.

You have asked two questions concerning limitations imposed by the campaign finance law, M.G.L. c. 55, on lobbying organizations.¹ In particular, you have asked: (1) can a lobbying organization hold a fundraising event for a candidate, and if so, what restrictions apply? and (2) what are the limitations on contributions from lobbying organizations to candidates? I will address each of your questions separately.

1. Can a lobbying organization hold a fundraising event for a candidate, and if so, what restrictions apply?

Yes. A lobbying organization can conduct a fundraising event, e.g., it can rent a hall, solicit attendance and contributions, and purchase refreshments for the event. However, such organizations are subject to Section 10A of M.G.L. c. 55. Section 10A regulates certain "contributions made through an intermediary or conduit," or so-called "bundled contributions."² Section 10A was enacted into law to limit and regulate the bundling of certain contributions, i.e.

¹ Your first question also relates to Chapter 3 of the General Laws, which is administered by the Secretary of State's Public Records Division. You should contact that office, at 727-2832, for additional guidance. As used in this advisory opinion, the term "lobbying organization" refers to any "group" or "organization" required to register with the Secretary of State pursuant s. 44 of Chapter 3. See M.G.L. c. 55, s. 10A(b)(2).

² As defined by section 10A, the term "contributions made through an intermediary or conduit" **includes both** (i) contributions "**delivered**, whether in person or by mail, to a particular candidate or such candidate's authorized committee or agent" **and also** (ii) contributions made "in a manner that identifies in writing the person who **arranged** the making of the contributions" (Emphasis added). See M.G.L. c. 55, section 10A(c)(1)(i) and (c)(1)(ii).

contributions greater than \$100.00, made through "regulated intermediaries" which include lobbying organizations, PACs, legislative and executive agents (as of July 1, 1995) and persons bundling corporate contributions. See AO-95-06, AO-95-17 and M-95-05 (copies are enclosed).

As discussed in more detail in the enclosed opinions and memorandum, regulated intermediaries and bundled contributions to candidates are limited in two ways. First, the contributions are treated not only as contributions from the original source of the contribution but also as "contributions from the intermediary or conduit to the candidate, if the intermediary or conduit is [a regulated intermediary]" M.G.L. c. 55, s. 10A(b)(2). In addition, a regulated intermediary must "report in writing the original source and the intended recipient of such contribution along with other information required by [chapter 55] to the director [of OCPF] and to the [candidate]." See M.G.L. c. 55, s. 10A(e).

To avoid application of the bundling provision (and also to avoid violating M.G.L. c. 55, s. 10, which prohibits the making of a contribution in a manner which disguises the true origin of the contribution), lobbying organizations holding fundraisers for a candidate should, as you suggest in your letter, ensure that contributors, individually or personally, give contributions directly to the candidate or an authorized agent of the candidate's committee. If contributions, any one of which is over \$100, are given to a legislative agent or to an officer, employee or other person acting on behalf of the organization, and then delivered to the candidate, the bundling provisions would become applicable. In addition, regulated bundling occurs if contributions, any one of which is over \$100, are made in a manner which identifies, in writing, a lobbying organization as having arranged the contributions.

Although the bundling provisions are not applicable to a lobbying organization simply because it invites persons to a fundraiser or sends a letter soliciting contributions to persons invited to the fundraiser, the following examples illustrate activities which will trigger the application of the provisions of section 10A in the context of fundraisers sponsored by lobbying organizations:

(1) if the organization writes to the candidate after the fundraiser asserting or confirming that the organization arranged for the contributions, then the organization is subject to the bundling provisions;

(2) if contributors include, with the check sent to the candidate, an invitation or response card from the lobbying organization, or otherwise refer to the lobbying organization on the check or in a letter accompanying the check sent to the candidate, then the organization is subject to the bundling provisions (see (1)).

I recognize that these restrictions may make fundraising for a candidate more difficult for a lobbying organization. However, such an added burden is required by the language of the bundling provision. It should also be remembered that, if a lobbying organization does not bundle contributions or as

noted above if all the contributions are \$100 or less, section 10A is not implicated.

2. Limitations on contributions from lobbying organizations to candidates.

Although legislative agents, and (as of July 1, 1995) executive agents, are subject to a limitation of \$200 per calendar year on contributions to a candidate, the law does not similarly restrict contributions from lobbying organizations.

Lobbying organizations, regardless of whether they are regulated intermediaries, are subject to limitations on contributions if they are acting as political committees. M.G.L. c. 55, s. 1 defines a "political committee as "any . . . organization . . . which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate . . . or . . . question submitted to the voters," (emphasis added). The office recognizes that many organizations which do not raise funds to influence elections but do make **incidental** political expenditures would be regulated by this office if the statute was strictly interpreted. Therefore, the office developed guidelines to "balance the public interest of disclosure and regulation of campaign finance activity in Massachusetts with the administrative and legal burdens imposed on persons participating financially in the Commonwealth's political process." See IB-88-01.

In IB-88-01, this office stated that organizations which do not raise funds to influence elections may make "incidental" expenditures and contributions for such purposes without being subject to the contribution limits placed on a political committee. "Incidental" expenditures were defined in the bulletin as expenditures which "exceed, in aggregate, in a calendar year, either ten percent (10%) of such organization's gross revenues for the previous calendar year, or fifteen thousand dollars (\$15,000), whichever is less."

Under IB-88-01, a lobbying organization which does not raise funds to influence elections, but does make expenditures, including contributions, for such purposes, will not become subject to any limitations until the incidental threshold is reached. The organization would become subject to the \$500 limit on contributions immediately after the threshold is reached, since the organization would be subject to the limits on contributions placed on PACs. So long as the incidental threshold is not reached, however, the organization may contribute without limit to a candidate.³ However, contributions bundled by a lobbying organization count against

³ However, if a lobbying organization receives funds from business or professional corporations, the organization may not contribute to any candidate or candidate committee. See M.G.L. c. 55, s. 8. In addition, if a lobbying organization is a business or professional corporation, or members of the organization are P.C.s, a candidate or candidate committee would have to reimburse the organization for any goods or services provided in connection with a fundraising event.

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the \$15,000 and, therefore, an organization delivering bundled contributions to a candidate will reach the incidental threshold more rapidly than would otherwise be the case.

This opinion has been rendered solely on the basis of the representations in your letter and solely in the context of M.G.L. c. 55. Please do not hesitate to contact this office should you have additional questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan".

Michael J. Sullivan
Director

MJS/cp
Enclosures